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American Library Association

August 2, 2000

EX PARTE COMMENTS
UNIVERSAL SERVICE SUPPORT MECHANISM
FOR SCHOOLS AND LIBRARIES
CC DOCKET NO. 96-45

The Honorable William E. Kennard, Chairman
Federal Communications Commissions
445 Twelfth Street, SW
Washington, DC

Dear Chairman Kennard:

This is to present six critical issues that the American Library Association's (ALA's) E-rate Task Force has found to represent some of the most significant hurdles to improving library participation in the E-rate program. The following presents the issues, discusses how libraries are affected, and recommends policy changes to address the six issues.

Background

The American Library Association's (ALA) E-rate Task Force appreciates the Federal Communication Commission's (FCC's) support of the universal service program for schools and libraries (or E-rate) program. We also commend the Schools and Libraries Division (SLD) and the Universal Service Administrative Company (USAC) for their efforts to work with libraries and schools through three program years and now towards program improvements in Funding Year Four.

In any government program, especially one as new as the E-rate program, there are issues to be worked out and practices that need to be reviewed and revised. The ALA E-rate Task Force understands this developmental process and reviews six of the most critical issues regarding denials and appeals. We request that FCC make policy changes along the lines suggested, herein.

Six Critical Issues Concerning Denials and Appeals

As we move towards Year Four of the E-rate program, there are practices and patterns in the E-rate application denial and appeals process that appear to be contrary to and/or inconsistent with the Telecommunications Act of 1996 and the regulations of the FCC, or their intent. The practices and patterns also tend to frustrate all applicants, and to stymie and diminish library participation. Specifically, the most common and critical practices and patterns in denials and appeals include:

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1. The denial of an application for vendor required financial arrangements such as a one-time/up-front or advanced payment, is inconsistent with the intent of the Telecommunications Act of 1996. Yet some applications are being denied for this reason while others are approved under the same circumstances. In order to build innovative services utilizing advanced services and telecommunications, libraries and schools in seeking program eligible configurations and in structuring their contracts (including payments schedules) are at the mercy of vendors. The FCC authorizes in its May 9, 1997 order, payments at least on an annual basis, or an advanced payment for multiple years of service. In the case of advanced payments that exceed one year pro rata, an applicant may use its own funds to pay the full price and secure an arrangement with the vendor to rebate the payment in subsequent years.

Discussion: This is perhaps one of the more difficult of the denial issues, since an applicant has little or no control over what the vendor demands for the development of innovative applications using advanced services and telecommunications. Because there is no infrastructure in place in certain geographic areas (e.g., rural, tribal, or inner-city areas) for the type of services or configuration requested by the applicant, the vendor in most instances is not willing to provide services without a substantial advanced payment. Applicants seeking E-rate funding to provide access to and services using advanced services and telecommunications are attempting to carry out the mandate of the 1996 Act. Thus, the practice of denying applications simply because the vendor is requiring a substantial advance payment (and that is otherwise eligible), is to further frustrate and deny the ability of libraries and schools to provide access to advanced services and telecommunications to the populations that need access and services most. This is certainly contrary to the goals of the E-rate program and the Telecommunications Act of 1996. The Brooklyn Public Library denial and appeal, currently pending, addresses this issue (Year Two application number 149423; FRN 250887).

Policy Change Recommended: For otherwise eligible applications, permit flexibility in financial arrangements that require an up-front, one time payment.

2. The FCC appropriately decided in the Tennessee case that within the costs for telecom and other services, some of the network backbone costs are necessarily passed on to the applicants by the vendor. Applications have been denied based on the Tennessee decision, however, because the vendor "passed-on costs" for the network backbone "exceed what is reasonable." This is inappropriate since there has been no order by the FCC that establishes "a level of reasonableness" of such costs.

Discussion: Until the FCC provides a definition of what constitutes “reasonableness”, it is inappropriate to deny an application because one vendor demands passing on its network backbone costs more or less than another. Likewise, it is also inappropriate to deny an application merely because the vendor demands the applicant to pay a certain level of pass on costs. Denying applications without first establishing definition of a reasonable level of pass-on costs fails to provide appropriate guidance to applicants prior to filing an application. This practice of denial is not only unfair to applicants since they have no control over determining the costs a vendor decides to pass on, but also violates the applicant’s right to know the basis of eligibility in advance. The Brooklyn Public Library denial and appeal is also an example of this issue (Year Two application number 149423; FRN 250887).

Policy Change Recommended: 1. Determine with vendors and applicants the percentage of network backbone costs that would be “reasonable” to be passed on to a library or school; 2. Require vendors to abide by the established level such that unique or complex configurations, when needed, are provided. (The percentage established should not discourage carriers from supporting innovation by E-rate applicants.); and 3. Do not deny applications on this basis until this policy is in place.

3. The practice of denying a funding request for telecommunications services or Internet connection by the following reasoning:
 - a. asserting that the category of the funding request is incorrect and changing the category to internal connections, and then
 - b. claiming that since the category has changed to internal connections (a non-priority service) and because the funding amount requested exceeds 30 percent of the funding request, the application is denied, or
 - c. concluding that since part of the E-rate funding request category has changed to internal connections (a non-priority service), that part of the funding request is denied.

Discussion: Libraries which have experienced this practice of denial have been frustrated in their E-rate application efforts since denials were in many instances merely the selection of an item (such as a router) manufactured by one vendor over another, or a matter of wording and subjective interpretation. For example, for an Internet connection a router by one manufacturer is acceptable while a router from another manufacturer is not and is considered to be part of internal wiring or equipment. Another example would be a unique or complex configuration of telecommunications service that is required by a carrier to allow an advanced application. Dependent on the wording used by the applicant to explain this unique or complex configuration, the funding request may be

approved or denied. If denied, it is often because the description has been interpreted by SLD to involve internal wiring or equipment.

Policy Change Recommended: 1. Support high speed Internet connections and advanced telecommunications services funding by E-rate; 2. Do not change the category of the funding request without ensuring with the applicant and vendor that the change is appropriate.

4. The existence and use of a list to determine eligible services in the E-rate program is contrary to the 1996 Act and the Title 47 of the Code of Federal Regulations. The Act and CFR provide for access to and deployment of advanced services and telecommunications without limitations and in fact, requires that the selection of these services is to be technology neutral. That is, no specific advanced services, telecommunications, or technologies are prohibited or endorsed.

Discussion: The artificial limitations placed on the program by the use of the eligible services list inappropriately denies applications by libraries and schools, for advanced services and telecommunications. Denials in this area frustrate attempts by applicants to build innovative services envisioned by the Act and FCC regulations. Innovative services that could provide the neediest populations, rural and inner-city low-income families, with equitable access to advanced services and telecommunications.

Policy Change Recommended: Use a services list as a guide, only.

5. The denial of an application that merely duplicates the information included in a successful application from the preceding year. That is, an application that uses the same information from a previously funded application is denied, despite resolution of any issues with SLD in the prior funding year.

Discussion: Applicants depend on the information provided by SLD in making corrections and providing requested documentation. When applicants follow the directions given by SLD, receive funding, and the next year use the same information, but their applications is denied, it causes serious problems and increases frustration. Especially when some applicants spend months responding to SLD in order to resolve any and all questions one year, only to have to go through the same process all over again in the next year. This practice is not acceptable and it is unfair to applicants who attempt to do everything possible to address the varied requests from SLD in processing their applications. Shawnee Library System is an example of this type of denial and appeal

which is pending (Year Two application number 147437; FRN 242525, 242526, 287977, and 287985).

Policy Change Recommended: Ensure and require consistency in funding decisions.

6. Finally, the practice of denying and delaying library E-rate applications due to their failure to provide verification of National School Lunch Program (NSLP) data used to calculate their discount level, is the most common and long-standing issue. Library access to the data is dependent on their relationship with the school, school district, or state education department. This state of affairs continues to frustrate and unfairly deny library participation in the E-rate program. The FCC requires the use of the most recent NSLP data and many libraries are required during the application process to verify the NSLP data used. Yet access to that data is difficult to impossible for many libraries, since schools – the school district, and state education department – have custody and control of the NSLP data.

Discussion: Since the beginning of the E-rate program, many library applicants have had their applications denied or delayed for a significant periods of time because of the difficulty or inability to get and verify NSLP data used to calculate their discounts. The E-rate Task Force does not argue, at this time, that the NSLP data should not be used. Rather, we contend that the FCC should develop a workable process to mediate access to and verification of the NSLP data. A workable process would provide libraries access to the most recent data and would not hold them responsible for verifying the data used beyond indicating the source.

Policy Change Recommended: 1. Provide libraries with access to the most recent NSLP data received by SLD for use in their applications; 2. Do not require verification of the NSLP data by libraries, but require them to identify the source of the data and the name of the contact, if SLD is not the source.

Conclusion

The E-rate Task Force believes that the six denial and appeal areas above represent the most significant hurdles to improving library participation in the E-rate program. We stand ready to work with the Commission, FCC staff, the SLD, and USAC to address these issues. However, we understand that these issues are policy issues that must be addressed initially by the FCC, either informally or formally. We also hold that these issues must be considered as soon as possible to assist program improvement in Funding

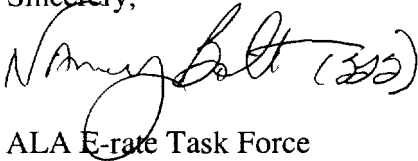
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Year Four. Therefore, we would be happy to discuss these issues with you at your convenience.

Should you have any questions or need additional information, please contact Nancy Bolt, Chairperson, ALA E-rate Task Force at (303) 866-6733, or Sandra L. Shirley of the ALA Washington Office staff at (202) 628-8421.

We thank you in advance for your consideration of these issues in denial practices and patterns and the recommended policy changes to address them.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy Bolt (303)". The signature is fluid and cursive, with the last name "Bolt" being more prominent.

ALA E-rate Task Force

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